there be other necessary facts not stated, that would have been reached had the language of the statute been employed." *Robinson* v. *Leach,* 10 Ind. 308.

PUBLIC OFFICERS—SECRET PROFITS.—In an action against a city officer, who, while acting in an advisory capacity to a committee of the council charged with the selection of a site for a building to be used in connection with his department, purchased land with a view to selling it to the city, and conveyed it to a third person who, pursuant to the plan, sold it to the city at an advanced price, the court held that the officer became a trustee for, and liable to the city to the extent of the difference between the price paid by him and that paid by the city. *City of Minneapolis* v. *Canterbury,* (Minn. 1913), 142 N. W. 812.

This case applies to a public officer the doctrine of constructive trusts which is frequently applied in the case of those standing in the private fiduciary relation of principal and agent. *Gardner* v. *Ogden,* 22 N. Y. 327; *Greenfield Savings Bank* v. *Simons,* 133 Mass. 415; *Bunker* v. *Miles,* 30 Me. 431. The leading case directly in point is one that arose in the Canadian Chancery Courts. The mayor of a city having contracted to purchase at a large discount, certain debentures which the city contemplated issuing, was compelled to account for the profits which he realized from the transaction. *Toronto* v. *Bowes,* 6 Grant 1. While this doctrine has not been very frequently invoked in this particular class of cases, yet it affords a very convenient remedy for the recovery of illegal profits where, as in the principal case, the contract is wholly executed on both sides, inasmuch as in such cases, according to the weight of authority, the city cannot rescind the transaction and recover the whole purchase price unless it is willing and able to place the other party in statu quo. He is entitled to the reasonable value of the thing contracted for, which in such cases is the purchase price less the profits. *Frick* v. *Brinkley,* 61 Ark. 397; *Macon* v. *Huff,* 60 Ga. 221; *Grand Island Gas Co.* v. *West,* 28 Nebr. 852; *Thomas* v. *Brownsville,* 109 U. S. 522. Other courts hold that such contracts are absolutely void, and that no recovery can be had on a quantum meruit. *Berka* v. *Woodward,* 125 Cal. 119, 73 Am. St. Rep. 31, and cases cited in the note.

SALES—NO IMPLIED WARRANTY OF FITNESS FOR PURPOSE INTENDED—Plaintiff sold defendant an engine of stated horse-power, the written contract containing an express warranty that it would develop such horse-power and further stipulations as to terms of payment and repairs. Plaintiff's agent had visited defendant's mill before the sale, examined the machinery, and therefore knew the use to which the engine was to be applied. Plaintiff sues on a note executed for balance of the price, and defendant, contending that there was an implied warranty that engine would run his mill, asks for damages. *Held,* there was no such implied warranty. *Middletown Mach. Co.* v. *Chaffin* (Ark. 1913), 157 S. W. 398.

It is well settled that, upon the present and executed sale of a definite ascertained and existing chattel, which is open to the buyer, and of which the seller is neither manufacturer nor grower, no warranty whatever as to quality or fitness is implied: *Parkinson* v. *Lee,* 2 East. 314; 2 BLACK, COMM.

*451; 2 MECHEM, SALES, § 1311; *Sweet* v. *Colgate*, 20 Johns (N. Y.) 196; *Mixer* v. *Coburn*, 11 Metc. (Mass.) 559; and it makes no difference that the seller knew that the buyer intended the chattel for a specific purpose, to which he erroneously supposed it to be adapted, for here the buyer relies on his own judgment, not on that of the seller. *Dickenson* v. *Jordan*, 11 Ired. L. (N. C.) 166, 53 Am. Dec. 403; *Hight* v. *Bacon*, 126 Mass. 10. But as was said in *Curtis & Co. Mfg. Co.* v. *Williams*, 48 Ark. 325, 3 S. W. 517—"there are exceptions to the rule as well established as the rule itself." One of these exceptions is in the case of a sale by a manufacturer of, or a dealer in, the goods sold. In this case the rule of caveat emptor does not apply. But even here a well defined and settled distinction prevails. "When a person contracts to supply an article which he manufactures, or in which he deals, to be applied to a *particular purpose* and under such circumstances that the buyer necessarily trusts to the skill of the seller, there is in that case an implied warranty that the article is reasonably fit for the purpose to which it is to be applied." ANSON, CONTRACTS (Knowlton's 2nd Ed.) *131, n[1]. *Hight* v. *Bacon*, (supra). 2 MECHEM, SALES, §§ 1343-4. 35 CYC. 402; *Jones* v. *Just*, L. R. 3 Q. B. 197; *Drummond* v. *Van Ingen*, 12 A. C. 294. But if the buyer, as in the principal case, orders a specific article, or a known described article, there is no warranty of fitness for a particular purpose, even though the manufacturer is informed of the purpose to which it is to be applied. This is the settled rule both in England and the United States. *Jones* v. *Just* (supra); *Ottawa Bottle & Flint Glass Co.* v. *Gunther et al.*, 31 Fed. 208; *Seitz* v. *Brewer's Refrigerating Mach. Co.*, 141 U. S. 510; *The Telluride Power Transmission Co.* v. *Crane Co.*, 208 Ill. 218.

SALES—RIGHT TO REJECT IN SALE ON APPROVAL.—Plaintiff contracted to sell defendant a player piano for $950 allowing $400 for defendant's old piano and pianola, and agreeing that the player piano should be satisfactory to the defendant. Defendant was not satisfied with the player piano, and demanded a return of his old piano and pianola. On plaintiff's suing for balance of price, defendant denies that there was a sale, and in a counter-claim seeks to recover damages for the alleged conversion of the old piano and pianola. *Held*, where a sale is made subject to the approval of the buyer, it suffices to defeat the sale that the buyer rejects the goods as unsatisfactory for any reason or no good reason. *Henley-Waite Music Co.* v. *Graniss* (Mo. 1913), 157 S. W. 817.

Where a contract contains a condition that one party must be satisfied with the performance, or be under no obligation, need that satisfaction be an *actual satisfaction* or merely a *reasonable satisfaction?* In case of contracts of sale, as distinguished from contracts for services rendered, a distinction must be made between "sale on trial or approval" and "sale or return." A "sale on trial or approval" is in the nature of an *option to purchase* the goods if they prove satisfactory, or in other words a sale upon "condition precedent." Here the contract is still executory, and property in the goods does not pass until the buyer has expressly or impliedly manifested his approval or acceptance. (*Hunt* v. *Wyman*, 100 Mass. 198) unless a differ-